

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

MALCOLM H. WIENER,

CIVIL ACTION NO.:

Plaintiff,

1:16-CV-04019-ER

v.

AXA EQUITABLE LIFE INSURANCE
COMPANY, ET AL.

APRIL 17, 2020

Defendants.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure and this Court's order on February 12, 2020, AXA Equitable Life Insurance Company, AXA Advisors, LLC, and AXA Network, LLC (collectively "AXA Equitable" or the "Defendants"), hereby respectfully moves for summary judgment dismissing all claims by Plaintiff Malcolm Wiener. This case arises from the termination of Plaintiff's three life insurance policies due to nonpayment in 2013. Plaintiff's claims are predicated on the allegations that he did not receive three separate notices of the policy lapses, and that AXA Equitable improperly declined to reinstate the policies.

Summary judgment in favor of AXA Equitable is warranted because the uncontradicted evidence in this case unequivocally establishes two facts that are fatal to Plaintiff's case: (1) AXA Equitable properly mailed three lapse notices to Plaintiff at the correct address; and, (2) AXA Equitable properly declined Plaintiff's reinstatement application pursuant to its underwriting

guidelines. Further, Plaintiff has no expert to establish his claims. Accordingly, AXA Equitable is entitled to summary judgment on all counts of the Complaint.

A Memorandum of Law in support of this motion is filed simultaneously herewith.

THE DEFENDANTS
AXA EQUITABLE LIFE INSURANCE
COMPANY, ET AL.

By: /s/ Robert Cassot

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically on April 17, 2020, and was served by mail to anyone unable to accept electronic filing and to plaintiff's counsel named below. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

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